



TEXAS ALCOHOLIC BEVERAGE COMMISSION

Post Office Box 13127, Austin, Texas 78711-3127 (512) 458-2500

Dick Durbin, Administrator

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August 3, 1992

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Opinion Committee

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The Honorable Dan Morales
Attorney General
The State of Texas
Austin, Texas 78711-2548

MARY KELLER

Dear General Morales:

Sections 2A and 3 of the Bingo Enabling Act, TEX. REV. CIV. STAT. ANN. art. 179d (Vernon Supp. 1992) levy a state tax and authorize the imposition of a local tax on gross receipts from the conduct of bingo games.

Section 20 of the Bingo Enabling Act reads as follows:

"Sec. 20. Reporting and Due Date of Taxes. The gross receipts taxes authorized or imposed by this Act are due and payable by the licensee or any person conducting bingo games without a license to the state treasurer quarterly on or before the 15th day of the month succeeding each calendar quarter. The report must be filed under oath on forms prescribed by the commission."

Section 23(e) of the Bingo Enabling Act reads as follows:

"(e) The commission by rule may provide for different tax-reporting periods and record-keeping procedures for licensees by class based on the amount of gross receipts received by a licensee."

Section 25 of the Bingo Enabling Act reads as follows:

"Sec. 25. Delivery of Return; Remittance. A licensee required to file a tax return shall deliver the quarterly return with a remittance of the net amount of the tax due to the office of the commission."

Effective March 1, 1992, the Texas Alcoholic Beverage Commission amended 16 TAC §55.550 to change the tax reporting period for the bingo gross receipts tax from quarterly to monthly, with the gross receipts tax return and tax payment due for each month on or before the 25th day of the following month, (see 16 Tex. Reg. 7688 and 17 Tex. Reg. 1284). This change in reporting period was made because evidence indicated that without more frequent reporting periods and

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thus a more frequent application of the tax exemption of \$15,000 per reporting period, a large proportion of charitable bingo games would be forced to cease operation. A number of organizations had urged that the commission institute a semi-monthly reporting period.

This is not the first time the reporting period for the bingo gross receipts tax has been changed. The Comptroller of Public Accounts amended what is now 16 TAC §55.550 (then 34 TAC §3.550), beginning with the first quarter of 1985, to change from monthly reporting and payment to quarterly reporting and payment to quarterly reporting and payment, (see 9 Tex. Reg. 5688 and 6333).

The commission has now received complaints stating that while it may change the reporting period the commission may not change the dates on which the tax must actually be paid.

The commission has interpreted the Bingo Enabling Act as requiring payment of the tax with each report since Section 25 of the Act requires remittance of the net amount of the tax due with the report and since the \$15,000.00 tax exemption applies to each reporting period. The commission has viewed the tax report, the tax exemption, and the tax payment as being inextricably linked.

In view of the comptroller's and the commission's previous interpretation of the Bingo Enabling Act and the objections to the change in tax payment date, we therefore ask the following question:

Does Section 23(e) of the Bingo Enabling Act, in authorizing the Alcoholic Beverage Commission to provide for different tax-reporting periods, also authorize the commission to require that the tax be paid with each tax report?

Should you need further information on this request, please contact Robert C. Falls, Staff Attorney, Bingo Division, at (512) 465-4924.

Sincerely,


Dick Durbin
Administrator

cc: Bill Conover
Christine Monzingo